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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/810,891 | 03/16/2001 | Louis H. Borders | WVANP011 | 6686 |
| 34071 | 7590 | 01/18/2006 | EXAMINER | |
| IPVENTURE, INC. 5150 EL CAMINO REAL SUITE A-22 LOS ALTOS, CA 94022 | | | BOYCE, ANDRE D | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3623 | |

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/810,891

Applicant(s)

BORDERS ET AL.

Examiner

Andre Boyce

Art Unit

3623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-11 and 21-26.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Susanna Diaz
SUSANNA M. DIAZ
PRIMARY EXAMINER
AU 3623

Continuation of 11. does NOT place the application in condition for allowance because: contrary to Applicant's assertion, Chen et al indeed discloses the range of customer point values associated with selected customer groups is adjusted to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution. Chen et al discloses segmenting of customers into one or more groups, based upon customer profiles, wherein the customer profiles are analyzed by a product planner to determine whether to enter or divest a line of business (column 8, lines 12-25). As such, the marketer in Chen et al can determine efficacy of the marketing mix, based on the customer profile, wherein the segmenting of customers can be changed (i.e., adjusted) in order to determine the best marketing mix. As such, determining the best marketing mix allows the marketer to converge to some distribution of products that determine the best mix.

Applicant also argues that it is not clear where Dietrich et al does disclose determining an actual capacity allocation distribution among the plurality of customer groups. The Examiner respectfully disagrees. Dietrich et al disclose data being analyzed to create customer profiles describing customer service activity and evaluating the incremental cost and resource allocation (i.e., range) of adding new customer to the service network (column 3, lines 57-67), thus determining an actual capacity allocation distribution.

Applicant also argues that Dietrich does not teach or suggest the at least one of the windows available to be selected depends on the customer group to which the specific customer is assigned and the adjusted range of customer point values. The Examiner respectfully disagrees and submits that Dietrich discloses the service activity for each service delivery interval (i.e., selection of delivery windows) based upon the customer profile (column 4, lines 33-40). Further, the customer profile in Chen et al disclose the specific customer is assigned and the adjusted range of customer point values, therefore the combination indeed discloses at least one of the windows available to be selected depends on the customer group to which the specific customer is assigned and the adjusted range of customer point values.

Applicant goes on to argue that Crici is not an analogous art to Applicant's invention. The Examiner respectfully disagrees and submits that it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Crici is indeed reasonably pertinent to the particular problem with which the applicant is concerned, namely providing an Internet based system wherein customers may pick from a plurality of scheduling windows provided by the service provider. In addition, Applicant's argument that Crici does not teach range of customer point values associated with selected customer groups is adjusted to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution is moot, since the Examiner is not relying on Crici to teach that limitation of the claim.

Lastly, in response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).